

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CHRIS MARTINEZ,

Plaintiff,

COMPLAINT

-against-

C.O. JOSEPH BROIS and
C.O. RICHARD ALLINGTON,

Plaintiff Demands a
Trial by Jury

Defendants.

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Plaintiff, by his attorneys Sivin, Miller & Roche LLP, complaining of
defendants, alleges as follows, upon information and belief:

THE PARTIES AND JURISDICTION

1. That at all times herein mentioned, plaintiff was and is a citizen of the State of New York.
2. That at all times herein mentioned, plaintiff was a prisoner at the Elmira Correctional Facility (Elmira), in Elmira, NY, and was under the care, custody, and control of the New York Department of Corrections and Community Supervision (DOCCS).
3. That at all times herein mentioned, defendants were and are citizens of the State of New York.
4. That at all times herein mentioned, defendant C.O. Joseph Brois (Brois) was a correction officer employed at Elmira by DOCCS.
5. That at all times herein mentioned, Brois was acting within the course and scope of his employment as a DOCCS correction officer.
6. That at all times herein mentioned, Brois was acting under color of state law.

7. That at all times herein mentioned, defendant C.O. Richard Allington (Allington) was a correction officer employed at Elmira by DOCCS.

8. That at all times herein mentioned, Allington was acting within the course and scope of his employment as a DOCCS correction officer.

9. That at all times herein mentioned, Allington was acting under color of state law.

10. That this Court has jurisdiction over this action in that the action arises under 42 USC § 1983 and alleges violations of plaintiff's civil rights, including rights guaranteed under the Eighth Amendment to the United States Constitution.

11. That venue is proper in the Western District of New York, which is where the events underlying this lawsuit occurred.

THE FACTS

12. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

13. That on January 30, 2019, inside Elmira, Brois and Allington brutally assaulted and battered plaintiff by, among other things, punching and kicking plaintiff, slamming plaintiff to the floor, striking plaintiff with nightsticks, discharging chemical spray at plaintiff, and throwing plaintiff down a flight of stairs.

14. That portions of the aforementioned assault and battery occurred after plaintiff already was placed in handcuffs.

15. That the aforesaid actions of Brois and Allington were without any legal justification and not in furtherance of any legitimate penological interest.

16. That Brois and Allington observed the aforesaid assault and battery by his fellow officer, had a reasonable opportunity to intervene to prevent and/or stop the assault and battery, but deliberately failed and refused to take any steps to do so.

17. That in an attempt to cover up their malfeasance, Brois and Allington caused an Inmate Misbehavior Report to be issued against plaintiff, falsely charging plaintiff with multiple offenses, including “Assault on Staff.”

18. That as a consequence of this false Inmate Misbehavior Report, plaintiff was unjustly punished, including but not limited to being confined to a Special Housing Unit.

19. That the aforesaid actions by Brois and Allington were intentional, sadistic, and malicious in nature.

20. That as a result of the aforementioned actions of Brois and Allington, plaintiff sustained physical and psychological injuries, endured and will continue to endure pain and suffering and loss of enjoyment of life, endured atypical and significant hardship in relation to the ordinary incidents of prison life, suffered and continues to suffer economic loss, and was otherwise damaged.

21. That the cause of action alleged herein falls within one or more of the exceptions set forth in Article 16 of New York’s Civil Practice Law & Rules with respect to joint and several liability.

FIRST CAUSE OF ACTION
(42 USC § 1983: Eighth Amendment)

22. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

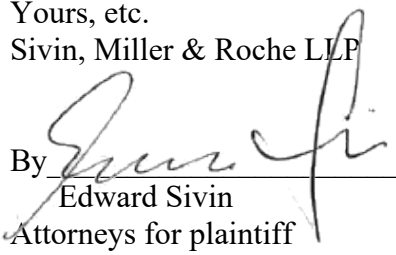
23. That the aforementioned acts by defendants were in violation of the rights guaranteed to plaintiff under the Eighth Amendment to the US Constitution to be free from cruel and unusual punishment.

24. That as a result thereof, plaintiff is entitled to recover damages from defendants pursuant to 42 USC § 1983.

WHEREFORE, plaintiff seeks judgment against defendants, and both of them, for compensatory damages in the amount of Two Million (\$2,000,000.00) Dollars, and punitive damages in an amount to be determined by the trier of fact, and plaintiff also seeks attorney's fees against both defendants pursuant to 42 USC § 1988, and plaintiff seeks interest, costs, and disbursements of this action.

Dated: New York, New York
September 24, 2020

Yours, etc.
Sivin, Miller & Roche LLP

By 
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